(2005) 12 P&H CK 0095

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 29821-M of 2004

Bir Narinder Singh — APPELLANT

Vs

Harpal Singh — RESPONDENT

Date of Decision : 08-12-2005

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2006) 1 RCR(Criminal) 751

Hon'ble Judges : Satish Kumar Mittal, J

Bench : Single Bench

Advocate : Ashit Malik, for the Appellant;

Final Decision : Allowed

Judgement

Satish Kumar Mittal, J.—Petitioner Bir Narinder Singh, who retired as a Manager, UCO Bank, in October, 1993, has filed this petition u/s 482 Code of Criminal Procedure for quashing the order dated 25.11.2000 passed by the JMIC, Fatehgarh Sahib vide which charge u/s 471 IPC has been framed against the Petitioner, and the order dated 10.4.2004 passed by the Additional Sessions Judge Fathgarh Sahib vide which his revision against the aforesaid order has been dismissed and for discharging him in the complaint filed by Respondent-Harpal Singh.

2. The brief facts of the case are that a partnership firm known and styled as Preet Cold Storage and Ice Factory, Khamano Mandi, Tehsil Samrala, District Ludhiana (hereinafter referred to as `the bank'') in the year 1983. The Respondent-Harpal Singh is the Managing Partner of the firm. While granting the loan, the bank obtained securities from the said firm against the building, land, machinery etc. The assets of the firm were got insured with the insurance company for the period 3.3.1983 to 3.3.1984. The bank debited the premium of the insurance amount to the account of the firm. The insurance of the firm was not got renewed after 3.3.1984 and unfortunately the cold storage smashed by impact on 15.3.1984 and the firm suffered a loss of Rs. 10,00,000/-.

3. The firm filed a suit in the year 1985 for damages against the bank. It was alleged that as per the usage and custom and also as per the understanding it was the bank to get renewed the insurance policy, as such the bank was liable to make good the losses of the firm. The said suit was contested by the bank on the plea that it was the duty of the firm to get the insurance renewed, and in this regard the firm was also informed by the bank before expiry of the insurance policy. In support of its plea, the bank produced some documents and examined certain witnesses. Since the Petitioner was working as a manager at the time of filing of the said suit, therefore, he appeared as a witness in the said suit in the year 1990. Ultimately the said suit was decreed and it was found that certain documents produced by the bank were forged documents. After the decision of the said civil suit, the Respondent filed a complaint against four officials of the bank, namely, Bir Narinder Singh (Petitioner), Krishan Kumar Behal, Sat Pal Singh Rana and S.K. Jain under Sections 465, 471 read with Section 34 IPC.

4. In the complaint, it was alleged that all the accused actively participated and conspired with each other in the process of making, counterfeiting, fabricating and forging false documents and produced the same in the Court. In this regard, the only allegation levelled against the Petitioner is that he produced a despatch register in the Court when he was examined as AW-1 on 20.2.1990 in connection with the application for permission to produce the secondary evidence of certain alleged letters. It has been alleged that the said alleged register was a forged document and the Petitioner despite having knowledge of its being forged produced the same in the Court.

5. When the aforesaid loan was given, only accused S.K. Jain, Krishan Kumar Behal and Sat Pal Singh Rana were posted in the bank. The Petitioner only joined as a Manager of the concerned branch of the bank in the year 1988 when the above suit was pending. He appeared in the said suit to produce the documents being record of the bank.

6. After recording the preliminary evidence, all the four accused were summoned to face the trial with commission of the offence under Sections 465, 471 read with Section 34 IPC vide order dated 5.9.1991. Thereafter, pre-charge evidence was recorded in which the complainant appeared himself as PW-1 and also examined one Navdeep Gupta, Handwriting Expert as PW-2 and closed his pre-charge evidence. After considering the pre-charge evidence, the JMIC, Fatehgarh Sahib discharged the accused S.K. Jain and framed the charge against the other accused u/s 471 IPC. The Petitioner challenged the said order in revision which was dismissed by the Additional Sessions Judge vide order dated 10.4.2004. Hence this petition.

7. Counsel for the Petitioner raised two-fold submissions. Firstly that there is no material/evidence against the Petitioner for framing the charge u/s 471 IPC as neither he was having any knowledge nor had reason to believe that the document produced by him in Court being Manager of the bank was a forged and fabricated one; and secondly that the Petitioner was a public servant being

Manager of the nationalized bank and he had produced the documents in discharge of his official duties as a Manager, therefore, no complaint against him could have been filed without obtaining prior sanction as required u/s 197 Code of Criminal Procedure

8. After hearing the counsel for the Petitioner and going through the complaint, the statement made by the Petitioner before the Civil Court as AW-1 and the impugned orders, I am of the opinion that this petition deserves to be allowed.

9. In the complaint, the allegation against the Petitioner is that he had produced the despatch register Ex., AW1/A in the Court when he was examined as AW-1 on 20.2.1990. The said despatch register was found to be forged. It has been alleged that the Petitioner along with other accused knowingly produced the said forged document in the Court. The said register was of the year 1983-84. When the said register was prepared the Petitioner was not posted in the bank. The Petitioner joined his duties in the concerned branch in June, 1988. In his statement as AW-1, he had stated that a despatch register pertaining to the year 1983-84 was being maintained in the bank and he brought the same and produced before the Court. In cross-examination, he has stated that it is incorrect that the had produced false and forged record. In the cross-examination, no question has been put that the Petitioner had the knowledge that the said document was forged. Undisputedly, the Petitioner had not prepared the said despatch register nor he was posted when the said register was prepared. He had produced the said despatch register in the Court in his official duty being Manager of the bank. There is nothing on the record which suggests adn prima facie shows that the Petitioner was known or had reason to believe that the said register was a forged document. The Petitioner was not working in the bank in the year 1983-84, therefore, he was not expected to known if any entry in the despatch register was forged. Section 471 Code of Criminal Procedure provides that whoever fraudulently or dishonestly uses as genuine any document which he knows or has reason to believe to be a forged document, shall be punished in the same manner as if he had forged such document. In my opinion, the Petitioner was neither having any knowledge nor any reason to believe that the despatch register was a forged one when he produced the same in the Court in the year 1990. Therefore, in my opinion, there is no material on the record on the basis of which the charge can be framed against the Petitioner u/s 471 IPC.

10. I also found force in the second contention of the learned Counsel for the Petitioner. The Petitioner being an employee of the nationalized bank is a public servant as has been so held by the Hon''ble Apex Court in Union of India and another Vs. Ashok Kumar Mitra, and the Delhi High Court in State (Delhi Administration) v. S.R. Vij, 2000 (1) RCR 528. The revisional Court also observed that the Petitioner is a public servant but rejected the contention of the Petitioner regarding prior sanction u/s 197 Code of Criminal Procedure on the ground that the accused being employees of the bank are governed by the rules of the

banking Companies, therefore, the provisions of Section 197 Code of Criminal Procedure are not applicable.

In my opinion, the reasoning given by the revisional Court are not sustainable. The Petitioner appeared in the witness box as manager of the bank when he was called to produce the record of the bank. He had produced the despatch register before the Court in discharge of his official duties. He has not forged the said despatch register nor he was having any knowledge that the same was a forged one. In these facts, in my opinion, no complaint could have been filed against the Petitioner for the offence u/s 471 IPC without obtaining the prior permission u/s 197 Code of Criminal Procedure

In view of the aforesaid, this petition is allowed and the impugned orders dated 25.11.2000 passed by the JMIC, Fatehgarh Sahib and 10.4.2004 passed by the Additional Sessions Judge, Fatehgarh Sahib are hereby quashed and the Petitioner is ordered to be discharged in the complaint case No. 72-T/31.1.1991/2.11.1992 titled Harpal Singh v. Bir Narinder Singh and others.

Petition allowed.